IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 145 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ATMARAM CHHAGANLAL THAKOR & 2 - Appellant(s)
Versus
BHALUBHAI CHHAGANBHAI THAKOR & 3 - Defendant(s)

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Appearance :

MR SANJAY M AMIN for Appellant(s) : 1,None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 2 - 3.
MR MB GANDHI for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,
None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants – original plaintiffs have challenged the judgment and

decree passed by the learned City Civil Court, Ahmedabad, dated 31st December, 1990 passed in Civil Suit No. 3653 of 1989 in dismissing the said suit.

2. The appellants herein filed aforesaid Civil Suit bearing Civil Suit No. 3653 of 1989 in the City Civil Court, Ahmedabad, initially for injunction restraining the original defendant No.1 from making any construction, however, subsequently, by way of amendment, the sale deed executed in favour of the defendant No.1 by the father of the appellants on 12th January, 1988, which was also challenged and in the alternative, the plaintiffs prayed for partition of the property also.

3. The appellants as well as the respondents are the family members. The original plaintiff Nos.1 and 3 were the real brothers and original plaintiff No.2 was their mother. The original defendant Nos.1 and 2 were brothers and the original defendant Nos.3 and 4 were sisters of

the plaintiff Nos.1 and 3. All were the legal heirs of deceased Chhaganji Abhuji, who died on 10th April, 1989. It was averred in the plaint that the property bearing Survey Nos.121 and 193 situated in Thakorvas, Navrangpura, Ahmedabad, were of the ownership of deceased Chhaganji as his self acquired properties. That the deceased Chhaganji executed registered Will on 15th February, 1989 and a declaration on 15th February, 1989 also. According to the Will, the property bearing Survey No. 193 was bequeathed jointly in favour of the plaintiff Nos.1 and 2 and defendant Nos. 1 and 2. However, as the defendant No.1 had filed Caveat in the Court contending that the terrace portion of the said property with a right to make further construction, was sold by the deceased Chhaganji to defendant No.1 and the rest of the parties do not have any right therein. The plaintiffs contended and alleged that within their knowledge, the deceased had not executed any sale-deed except the Will as alleged for making arrangement in respect of distribution of the

property and the plaintiffs apprehending that the defendant No.1 would commence illegal construction, filed the aforesaid suit for injunction initially restraining the respondent No.1 from making any construction on any part of the suit property including the terrace portion. As stated above, subsequently, the sale-deed dated 12th January, 1988 was challenged on the ground that the same was obtained by fraud and the same is nullity.

4. The suit was resisted by the defendant Nos.1 to 4 by filing the written statement at Exh.61. It was submitted that pursuant to the registered sale-deed dated 12th January, 1988, the defendant No.1 has become absolute owner of the terrace portion and therefore, he has unfettered right to make any construction or improvement thereon. It was also submitted that after the aforesaid sale-deed dated 12st January, 1988, the plans duly signed by the defendant No.1 and deceased Chhaganji Abhuji were submitted to the Ahmedabad Municipal Corporation for necessary permission

to make construction and the said plans were also approved and permission for making construction was granted on 30th May, 1989 and accordingly, he had started construction. It was also submitted that in fact, the plaintiffs were aware of the said sale-deed still, with an ulterior motive and to harass and cause monitory loss to the defendants, the present suit has been filed and therefore, it was requested to dismiss the suit.

5. The learned trial Court raised the issues at Exh.68. The plaintiff Nos.2 and 3 were examined at Exhs.69 and 86 respectively. They have also examined five other witnesses at Exhs. 97, 105, 108, 117 and 118. The defendant No. 1 was examined at Exh.143 and one attesting witness of the sale-deed was examined at Exh.163. The learned trial Court on appreciation of oral as well as documentary evidence has held that so far as the contention on behalf of the plaintiffs that the sale-deed dated 12th January, 1988 was obtained by fraud was not established

on evidence and/or even there were no proper pleadings with regard to the same. Considering the fact that the sale-deed was registered sale-deed and considering the subsequent conduct i.e. submitting of development, obtaining necessary permission for construction and consideration for the same, the learned trial Court negatived the contentions on behalf of the plaintiffs that the sale-deed was obtained by fraud and accordingly, the learned trial Court dismissed the suit.

6. This Court has considered the judgment and decree passed by the learned trial Court. This Court has also gone through the oral as well as documentary evidence and the findings of the learned trial Court. The learned trial Court has rightly held that the plaintiffs have neither pleaded fraud nor proved the same even by oral evidence. The learned trial Court has also given a finding that the aforesaid sale-deed was for a consideration of Rs.8000/-. Therefore, when the terrace right were sold by registered sale-deed,

the learned trial Court has rightly dismissed the suit. Hence, no interference of this Court is required in the matter and this Court is in complete agreement with the reasoning and findings given by the learned trial Court.

7. For the reasons stated above, there is no substance in the present appeal and the same is required to be dismissed and is accordingly dismissed. No costs.

(M.R.SHAH, J.)

kdc.